TENURE

OF

CHURCH PROPERTY.

TENURE OF

CHURCH PROPERTY

BY THE

REV. DENSMORE D. CHAPIN, A. M.

MINNEAPOLIS, MINN.,
JOHNSON, SMITH & HARRISON,
1890.

PREFATORY NOTE.

The substance of these papers appeared in the *Churchman* in May of the current year. Many words of approval have reached the writer from all parts of the land, for which he is most grateful, and the wish has been expressed that they be republished in more permanent form. In compliance with this wish this edition has been issued. To many legal gentlemen, especially, would the writer return his thanks for their appreciation of his labor, and to one of their number, a stranger, is he indebted, in part, for the means to meet the necessary expense of republication. The papers have been carefully revised, and some new matter added, especially reports in regard to incorporations in Florida, Georgia, Alabama, Mississippi, Kentucky, Kansas, Colorado, and New Mexico. Some account of action already taken in twenty-eight or thirty dioceses will be found. Surprise has been expressed that so much has been done, and the drift going on in the Church is clearly indicated.

That there is urgent need of reformation in our methods of holding property is but too evident. The testimony is the same from every source. A presbyter in an Eastern diocese writes: "I have made quite diligent inquiries to learn the *status* of things in ————, and

as a result am able to say that it is 'every which way.' No two parishes stand alike; few of our churches are exempt from alienation at the hands of an irresponsible and conscienceless vestry." A prominent layman, a lawyer, in another diocese says: "I hope you may be able to arouse the attention of the Church at large to the subject. Confusion everywhere seems to prevail. Parochial organizations are found in our diocese that have no record of their beginning, and no certainty exists of their being a corporate body at all, under any general or special law of the State. In the case of our diocesan property, we have had trustees authorized by canon to hold such property, but no charter under the laws of the State for such organization could be found, though search has been made back to 1823."

The writer here again expresses the hope that some legal gentleman, a Churchman, may take the matter up, and discuss the legal questions herein raised.

D. D. C.

STILLWATER, MINNESOTA, September, 1880.

TENURE OF CHURCH PROPERTY.

The insecurity of Church property in this country under the present mode of tenure has attracted much attention of late, and there is a casting about on the part of Church authorities and councils for a remedy.

The outcome, however, as yet, has not been great; in fact, the elements of the problem do not seem to be fully understood. What little knowledge exists upon the subject is hidden away in law books and decisions of courts, inaccessible to the ordinary reader, unknown apparently to lawyers themselves, unless their attention has been especially called to the subject.

It is greatly to be desired that some one skilled in canon and statute law, a Churchman, with interest in the subject, and with ample facilities for the study, should give the Church a monograph upon it, setting forth the methods by which property for sacred purposes has been held in different times and countries, with special reference and bearing to the problems before us at the present time. Such a labor could be accomplished only by a trained legal mind, and would bring little remuneration, but he who should conscientiously and successfully perform it would place the whole Church under lasting obligation to him.

The object of these papers is to call attention to the subject. Our current Church literature is almost entirely barren in regard to it. The "Manuals" of Hoffman, Hawks, Vinton, and others, are confined mainly to ecclesiastical law, and but incidentally allude to the statute laws relative to matters pertaining to religious affairs.* A few newspaper paragraphs, a magazine article or two have been given us, and these have gone chiefly to show the dangers which beset property under the vestry system which has obtained in the American Church.† Beyond these, and the discussions which have grown out of the case of Christ church, Chicago, and litigations in one or two other cases, the writer hereof remembers to have met little upon the subject in the current literature of our Church.

Others, however, besides Churchmen are at work upon the same problem, and the Hon. E. L. Fancher, LL. D., of New York, in 1876, delivered a lecture before the Methodist conference in that city upon the "Law of Religious Corporations of New York," which is of great value, and to which reference will be made. The sub-

*It has properly been objected to these writers, with the exception of Dr. Hawks, perhaps, that they are "too English," *i. e.* they have made too much of English law and custom, which have really little force here, and too little of the statute laws, by which, in fact, our church corporations are governed. The same objection holds against Mr. Baum's book.

†These dangers have been especially well set forth in an able article in The Church Review for January, 1879, by the Rev. G. Woolsey Hodge, of Philadelphia, and which deserves greater attention than it has received.

stance of the lecture is published in a volume of "Laws Relating to Religious Corporations," by the Rev. Sanford Hunt, D. D., of the Methodist Church, New York, 1878, which volume contains the laws of the different States upon the subject, and is the best manual of the kind extant.

The writer hereof has given some attention to the subject, but amid other and engrossing cares, away from books, his means of study have consequently been limited; but he has arrived at some conclusions, and gathered a few facts which he ventures to present, as has been said, chiefly with the hope of stimulating others to labor in an almost unexplored field. He would only be too glad if some of his conclusions can be shown to be wrong.

The method of holding Church property in the United States seems to be, to a great extent, a novel one, the outgrowth of our peculiar institutions and the necessities arising from the separation of Church and State. This method consists in the creation of religious corporations, which differ little from civil corporations for secular purposes, except in their end; yet there have come to us through colonial custom and usage some of the traditions of English common and ecclesiastical law. These traditions, however, as against the written statutes of the different States, are of little avail so far as the disposition and control of property are concerned. The English theory of *abeyance*, in which, by one of those peculiar fictions common to English law, the title to Church property there is said to be placed, is unknown

here.* Neither do we know anything of that other fiction of the Civil Law recognized over the greater part of Europe from the time of Justinian to the present day, that Church property is "nobody's property," a theory remotely akin to the "corban" of the Hebrews. The Roman law recognized three kinds of property: public property, *i. e.* belonging to the State; private property, and *nobody's property (res nullius)*, and Church property was placed under the last head.

But in America, as has been said, the Church, or the churches, exist simply as any other corporation, and have no analogy to what are known in England as "ecclesiastical corporations." The State has no "establishment," and knows, theoretically, no preference for one denomination over another; all stand on the same footing before the law. In practice, however, the Puritan idea has prevailed—that is, that any number, a half dozen, more or less, of persons could combine themselves together and organize a "church." The law seems to have lent itself to this idea, and made this organization a body corporate, capable of holding property for ecclesiastical uses; being, in fact, a *church* to all intents and purposes. Around this idea as a nucleus the whole scheme of legislation, so far as it has been a scheme, or has been based upon an idea, has been crystallized ; and to-day the laws of all the States are shaped upon the same or nearly the same model, and for the most part

*The actual title is not in the "incumbent," nor the "patron" but in *abeyance*.

the ecclesiastical regulations of the different religious bodies, including the Protestant Episcopal Church, recognize and are based upon the same idea. The Roman Catholic Church forms a noted exception, yet even this has been obliged to conform in a measure to it;* also there are some exceptions coming down to us from colonial times; such as the Old South Church and King's Chapel, Boston, and some others, which seem to have been framed upon the joint-stock proprietary principle, owned in absolute fee by the pew-holders as proprietors of the same.

It is necessary to understand this, for out of it has come the prevailing customs of the country; all legislation has been based upon it, and the decisions of the courts have recognized it; from the same source most of the troubles have come which now on every hand are causing so much anxiety and alarm.

The Episcopal Church, in spite of theories, began in this country in a congregational way. It had no bishops in fact, no dioceses, no organization except the congregational one, and when, after the revolution, dioceses were organized, they were simply confederations of existing parishes uniting, in a somewhat loose way, for certain specified and limited purposes; the parishes re-

*The property of the Roman Church, for the most part, in accordance with a decree of the Council of Baltimore, is held by the Bishops in their own name. The danger of this system has recently been shown in the case of Abp. Purcell. By special enactments in some States, corporations composed of the bishop, vicar-general, the pastor and two laymen, hold parochial property.

maining the practical church units, holding the church property, being the only corporate bodies known to the law; and all the power and authority the dioceses possess flows from parishes as the organic source of life.* And to this day the dioceses as such, for the most part, have no corporate and legal existence which the legislatures of the States and the courts know and recognize. It follows from this that the Episcopal Church is in exactly the same category, or has been, until some recent attempts at legislation have somewhat changed the *status*, upon the same level, and before the law in the same plane as the Congregational and other religious bodies of professedly congregational polity in the land. The parish is the *church*. It owns and controls its property; may sell or alienate the same, subject only to its organic law, *i. e.* to the statute law, to which it owes its organic life, and the articles of incorporation which form its charter as a body corporate. In substantiation of this idea, Judge Hoffman says: "The statutes which create an incorporation, either particularly of a vestry in cases of Episcopal churches, or trustees generally, give the usual powers to take and hold real estate, to manage all the property and temporalities of the body, to have succession and the other powers attendant upon

*Such in fact has been our working system, and such the theory of our organization and polity, as expounded by Dr. Vinton, as will be seen by reference to his "Manual," p. 94. The idea that the Diocese is the normal and organic unit seems to have been forgotten or ignored.

the formation of a corporation aggregate" (Law of the Church, p. 252).*

Upon this matter I shall take the liberty of making some quotations from the lecture of Judge Fancher, above mentioned.

He says: "The law does not take cognizance of any Church in respect of its doctrinal peculiarity, nor does denominational character affect its civil rights. The courts, however, may inquire into those matters where questions concerning property call for it" (p. iii.).

Again, speaking of the law of 1813,† which, although often amended, still remains substantially the same, he says: "Although it declares that the trustees shall be a body corporate, a view of the entire act, and the current authority as well as the popular opinion, sustains the position that the congregation or society, and not the trustees, are incorporated. The relation which the trustees bear to the corporation is not that of private trustees to the *cestuis que trust*, but that of directors to a civil corporation. They are the managing directors of the corporation, invested, as to its temporal affairs,

*See also the same author in *Ec. Law of New York*. He says, speaking of the duties of the Rector, "Whenever the provisions of such statutes, expressly or by necessary implication, govern his relations with a vestry or congregation, or otherwise, they form the absolute law for him." p. 78.

†The first section of this act was framed with special reference to the formation of parishes in the Episcopal Church. It was repealed in 1868, and a special law passed in its place. So far as the tenure of property is concerned, its provisions in no way differed from the other sections of the act.

with such particular powers as are specified in the statute, and, also, within the sphere of their appropriate duties, with such discretionary powers as may properly be exercised by officers of a civil corporation. Therefore whatever property is acquired is vested in the corporation aggregate, and not in the trustees"* (p. iv.).

So far did this power go that, in the opinion of the learned judge, "as to the temporal concerns of such a corporation, . . . if a band of infidels should have become members of a religious congregation, and, as electors for trustees, should have elected some of their number to the board, the courts could not, prior to the late act of 1875, interfere. . . . . The courts hitherto, before the law of 1875, had held that religious corporations, formed under the third section of the act of 1813, had no denominational character, and that none could be engrafted on them. Ecclesiastical connection, doctrines, rites, or modes of government of the spiritual body did not affect the legal character of the corporation. The title of the trustees to office, and the control of the property, prior to the late act of March 29th, 1875, was not impaired by any aberration in doctrine or Church government on the part of the congregation which elected the trustees" (p. vi.).

These are very sweeping and very startling propositions, and, if true, it is for Church lawyers to determine how far they may apply to parishes of the Episcopal

*This is a very important distinction, and should be carefully noted.

Church in New York, organized prior to 1875. Also it is for them to inquire how far, if at all, the statute of 1875 can be made applicable to parishes organized prior to that date.

This New York statute of 1813 is a very important one in the legislation of this country in regard to religious corporations, for it is the model which has been closely followed in most of the States, and consequently the greater part of our legislation is based upon it.

II.

The parish, as that organization now exists in this country, has a twofold aspect. The first, that of a civil corporation created for a religious purpose, is the primary and chief one. This gives to it its stamp and character. The statute law under which it has been formed, and its "articles of incorporation" (whatever they may be called), constitute its organic law. These are the fountain from which it flows, and the rule by which it must be governed. All its internal polity must be in conformity with these. All parish meetings and vestry proceedings should be in accordance with these, and all property acquired must be held and managed in the same way The courts will hold, if called upon, to

*I doubt if one rector in ten in the country has any knowledge of the organic law of his parish, or the requirements of the statute in regard to his duties toward the corporation, or his rights under the same.

a strict and literal enforcement in these respects, and will allow no interference from other and outside sources. If any character of trust has been stamped upon the original organization which does not contravene the statute, or upon any species of property held by the parish, this trust will be protected and enforced.

These, broadly speaking, are the general conditions of our parish existence as civil corporations. They are common to the parishes of the Episcopal Church and the societies of the religious denominations generally.

The other aspect is a purely ecclesiastical one, and pertains to the relations of the parish to the diocese and the Church at large. Although from a churchly standpoint, this relation may be the primary one, from the secular and legal side it is purely accidental and secondary—wholly a voluntary arrangement, and the civil courts will so regard it. In fact, many parishes exist, such as the Holy Communion and Holy Trinity, New York city, which have never entered into this arrangement at all.

The only question which can arise is, when a parish "is admitted into union" (the language is significant) with a diocese, does it subordinate itself in any way, as to its secular concerns, of necessity, to the rule and control of the diocese? In other words, does it merge itself into the larger organization in such a way as to be subject to any law in these respects other than it has formed, or has been formed by the statute law for itself?

If our above propositions are correct, it certainly does not so merge itself. The diocese may prescribe rules and methods of procedure as conditions precedent to "union with" itself, and, if these conditions are not complied with, may exclude the parish from diocesan privileges, but here its jurisdiction ends, unless this condition is made a part of its organic law as a civil corporation; but this condition does not exist, I apprehend, in many parishes not recently organized.

In fact, this was the very question at issue in the famous case of Christ church, Chicago—a *res adjudicata*—and is the law absolute in three of our dioceses, and the law presumptive in the rest, until that decision shall be reversed; and, considering what the whole course of legislation has been, and the general decisions of the courts—in fact, the whole "stream of tendency" until the decision of that famous case—there seems little prospect that the decision will or can be reversed in regard to parishes formed before that time, unless in exceptional cases, where some character of trust had been expressed or implied.*

I quote from the "case" and decision to show the strength of this position:

"*Bill avers:* That said parish of Christ church, from the time of its organization and admission into union with said convention, has been and still is a part and

*There is probably no reason why Trinity parish, New York, could not alienate its property from the Church, if it wished, except the character of trust originally stamped upon it.

parcel of the Protestant Episcopal Church in the Diocese of Illinois, and subject to the laws, regulations, discipline, and authorities of said Church, and that the said church in said diocese is, and all said time has been, part and parcel of the said Protestant Episcopal Church in the United States of America, and subject to the constitution, canons, and other laws thereof; that said church, in said diocese, long prior to the organization of said parish, acceded to the constitution and canons of the said Protestant Episcopal Church in the United States of America, and recognized the authority of the General Convention thereof.

"*Answer admits:* That the parish of Christ church, since its admission into union with the convention of the Protestant Episcopal Church in the Diocese of Illinois, has been, and will continue so to be, until the connection is severed by the action of that ecclesiastical organization, part and parcel of the Protestant Episcopal Church of said diocese and of the United States, and as such subject to the laws and regulations thereof as an ecclesiastical body, or to the loss of privileges pertaining to it as such; but the defendants deny that so far as temporal rights and secular affairs of said parish are concerned, including therein the employment and payment of such person to conduct religious services for said parish as may be by it selected, the same are subject to the control of the laws, regulations, and authorities, constitutions and canons. of the Protestant Episcopal

Church of the Diocese of Illinois and of the United States, but insist that as to such rights and affairs, the parish of Christ church is duly incorporated under the laws of the State of Illinois in relation to religious corporations, and in that regard is purely a civil corporation, and controlled by the laws of the State alone from which comes its charter of incorporation, and that these defendants are the representatives of said civil corporation, to whom it committed the custody of its property and management of its temporal concerns, which, by the law of the land, are in no wise brought into subjection to any ecclesiastical judicature or governing body whatever. That as to the officers of the civil corporation known as Christ church, they are, under the laws of the State of Illinois, vested with the customary powers of officers in like cases, and subject, in the disposition and management of the property and revenues of said corporation, to the will of the members of said corporation, expressed according to law." (Calkins *vs.* Cheney—*Abstract, p. 8, et seq.*).

More could be quoted from the "case" to the same effect, but it is not necessary.

The decision by Judge Schofield is too long to quote, but a few abstracts show its tenor, and fully sustain the defendants in the answer quoted above.

He says: "If under the facts stated the parish or congregation has the right to declare what religious use the property shall be applied to, without regard to the de-

cision of ecclesiastical judicatories, it is clear the injunction should not be awarded, and this is the only inquiry to which we shall direct our attention."

Again: "From these references to the statute it is clear that the trustees of an incorporated religious society or association do not hold the property in absence of declared or clearly implied trust for any church in general, nor for the benefit of any doctrines or tenets of faith and practice in religious matters, but solely for the society or congregation whose officers they are, and that they are not, in the discharge of their duties, subject to the control of any ecclesiastical judicatory. The property belongs to the society or congregation so long as the corporation exists, and when it ceases to exist, belongs to the donors or the heirs."

Again: "Such incorporated societies are not, therefore, to be classified with ecclesiastical persons, and subject to ecclesiastical judicatories, but rather with civil corporations, to be controlled and managed under the general principles of law applicable to such corporations as administered by the civil courts."

And much more to the same effect.

Stripped of all extraneous matter, this was the point at issue, and it is not easy to see how the outcome could have been other than it was.* We may not like it, may

*The Rev. Mr. Baum's book on "The Rights and Duties of Rectors, Church-wardens and Vestrymen" has come into my hands since the above was written. I find that in commenting upon Canon 24, Title I. of the canons of General Convention, he takes

believe it all wrong—from the Church standpoint it certainly is—may believe it a case of clear robbery under the form of law—I so believe it—but what are we going to do about it? Who but the Church herself is to blame for going on for a century, almost, organizing and incorporating an almost unmixed congregationalism! The Church itself, or the *Churches*, which are the dioceses, with few exceptions, and these of recent date, have no standing place, no existence, in fact, as corporate bodies, as property holders, or capable of holding property, or appearing in the courts, in all the broad land to-day—that place has been vacated to local and irresponsible

substantially the same view as has been taken above. As to Sec. 2 of that canon, he says: "It is only binding upon the consciences of Churchmen; it does not legally bind a vestry or congregation. If by charter or the statute law of the State the vestry has power to alienate, no canon of the general or diocesan convention can deprive them of such a right. But it shows the mind of the Church, and all Churchmen who are true to the Church will be governed by it The whole of this canon should be incorporated in the statute law of the State governing the parochial incorporation thereof, which would guard new parishes in the future. But the parishes already incorporated it would not affect until their charters were amended so as to conform to it. A charter is special legislation, and is not affected by the general law of the State, unless granted under a statute subjecting it to amendment by future State legislation" (p. 298). It has always been a source of wonder that the General Convention, containing so many able lawyers, should ever have passed such a canon. As well might they have enacted by solemn canon law that the Mississippi river should run north! However, it is but fair to say that the incongruity of such legislation was apparent, for the *proviso* is attached that "This section shall not be operative in any State with the laws of which, relating to the title and holding of property by religious corporations, the same may conflict."

bodies owing little allegiance to the Church—their existence ending in themselves!

If these positions are not true, none will be more glad than the writer to see them disproved; but if true, it is best to know it, to confess it; no "ostrich-policy" of hiding the facts will be of avail. These are of the very elements of the problem which all the Church is trying to solve.

In May, 1875, the legislature of New York passed the following act as amendatory of the general law of 1813:

"Sec. 4. The trustees of any church, congregation, or religious society, incorporated under said section three of the above-mentioned act [1813], shall administer the temporalities thereof, and hold and apply the estate and property belonging thereto, and the revenues of the same, for the benefit of said corporation, according to the discipline, rules and usages of the denomination to which the *church members* of the corporation belong; and it shall not be lawful for the trustees to divert such estate, property, or revenues to any other purpose, except toward the support and maintenance of any religious, benevolent, or other institution connected with such church, congregation, or religious society."

This act marks an era in our legislation, a turning-point in another direction. It is probably the first effort to fix, in a general way, conditions of trust, of a denominational kind, upon trustees holding property for religious purposes. Judge Fancher says in regard to it:

"Prior to this act it had several times been held by the courts that the congregation and trustees could change their faith and denomination, and totally disregard the ecclesiastical relations and ordinances of the denomination to which before they were attached."

It will be seen, however, by the words I have italicized in the act, "church members," that somewhat of the old leaven still remained, virtually neutralizing the whole intention of the law. And so we find that at a subsequent date (April 6th, 1876) the act was amended so as to read, beginning, "The rector, wardens, and vestrymen, or the trustees, consistory, or session of any church," etc.; and further on, "according to the rules and usages of the church or denomination." the words "church members" being stricken out.

Thus broadened out, the act is made to cover the conditions of the Episcopal Church.

The special legislation in regard to the Episcopal Church up to this time, so far as I can see, in respect to the subject matter of our inquiry, in no respect differs from the general law.

This legislation of New York has been followed in effect by other States.

The other question which we asked, viz., Whether legislation like that of New York of 1875, above quoted, is or can be *retroactive?* that is, whether it can apply to parishes organized prior to that date, I shall content myself with asking, hoping others will try to answer it.

It leads into deep legal water, where a "layman," so far as the law is concerned, can scarcely venture. The law quoted, however, seems to imply that it does have such application, and Judge Fancher, in commenting upon it, seems to hold the same view. But other legal minds think differently, and do not hesitate to assert that, as to corporations created prior to the passage of the act, it is absolutely null and void—is virtually an *ex post facto* law; that these corporations are governed solely by their own organic law. Although the statutes they were created under have been repealed, and are no longer on the statute books, still the corporations look to them alone as their governing power. The decision of the Supreme Court of the United States in the famous Dartmouth College case favors this view. In this case the court held that the charter of a corporation is of the nature of a contract between the State and the corporation, and cannot be annulled or changed without the consent of both contracting parties; therefore it is not in the power of a legislature to take away or alter a granted charter of its own motion only. The application of this doctrine to our question is evident.

But if, as seems to have been held in more recent decisions by the same tribunal in the "Granger cases," legislatures have power to modify and change the charters of the bodies of their own creation, then these acts apply to all parishes alike, whenever organized. Whether these decisions are at variance is the business of the courts themselves to determine.

It is probable, however, that lawyers will differ in opinion in this respect, and that this question, like the other, must ultimately be decided by the courts. Meantime, the matter is worthy of the most thoughtful legal ability in the Church.*

III.

It should be remembered that these papers are not dealing with ecclesiastical theories, but with historical and somewhat hard and secular facts; with matters as they appear in civil courts rather than Church councils. I am aiming to describe things as they are rather than as they should be.

The number of parishes in the United States is about 3,000, scattered over more than forty States and Territories, and, as civil corporations, chartered according to the various and varying laws of those States and Territories, and, of course, governed by the same.

*Wm. Henry Arnaux, Esq., writes to the *Churchman*, of July 10, giving the history of the Dartmouth College case, and explaining, or endeavoring to explain, the difference between this and the "Granger" cases. I am told, however, by competent legal authority, that in the West, where the latter cases arose, there has not been general satisfaction among the legal profession as to the soundness of the distinctions made. These cases went up to the Supreme Court from Wisconsin, Iowa and Minnesota. The Constitution of Wisconsin contains a provision forbidding the granting of perpetual charters, but Iowa and Minnesota have no such provisions. I greatly regret that Mr. Arnaux did not undertake to explain the effect of the laws of 1875–6 upon corporations created prior to that time.

Of the number and extent of these variations no man can tell, and of their powers, duties and obligations the parishes themselves have little knowledge. Their "Articles of Incorporation" have, for the most part, been drawn by local lawyers,* having little knowledge of ecclesiastical matters, and these various laws are interpreted by multitudes of local courts.

Minnesota is one of the newest States, yet an examination of its statute books reveals the following facts: On the formation of the Territory in 1850 the laws of Wisconsin were in force. The law of Wisconsin in regard to the formation of religious societies was a copy, for the most part, of the New York law of 1813.

In 1851 the same law, with some minor amendments, was adopted by the Territorial legislature.

This was amended by the general Territorial act of 1853.

In 1856 the "Van Ingen law" was passed; this was, in general, a copy of the New York law, and was the first legislation in Minnesota in regard to the Episcopal Church especially.

*I have obtained copies of the "Articles of Incorporation" of a number of parishes, and together they form a curiosity. It is simply amazing to note the carelessness, not to say ignorance, with which they have been drawn up. In most of the Dioceses no effort seems to have been made to provide a suitable legal form for these most important documents, on the wording of which so much depends. Under such circumstances it is hardly necessary to say that any decision of the courts in regard to one parish can be no precedent for another, as scarcely any two exist on the same conditions.

By special acts of the Territorial legislature some of the older parishes, as Gethsemane, Minneapolis, were incorporated—how many I do not know. These, of course, are subject to their own special act, and in no way under general laws.

In 1857 the Territory became a State, and in 1858 the law of 1853, with some amendments, was re-enacted by the State legislature.

At the same time, and by the same body, the "Van Ingen law," also with some amendments, was re-enacted

In 1866 the general law was again amended, some changes being made.

In 1876 the "Van Ingen law" was again amended. Under this law, with its variations, the greater part of the parishes of the diocese, probably, have been incorporated.

In 1877 was passed the "Wilder law." Its phraseology is peculiar, but its aim seems to be to accomplish the same as is supposed to be accomplished by the New York laws of 1875–1876, viz., to impose some conditions of trust upon the parishes other than for the congregation itself. Whether it intends to impose this trust upon the parishes organized prior to 1877, I am unable to make out.

Here, then, we have, in thirty years, at least eight different laws, under any of which parishes might have been organized, and of special acts, how many I do not know. Of course, each parish, for its government, goes

back to its organic law. Meantime, it is probable that most of these parishes, in such matters as the election of wardens and vestry, and other matters, have thought they should be governed by the canons of the diocese. As civil corporations, as we have seen, neither the diocese nor General Convention has in these respects any control, unless such control is provided for in the charter of the parish, or in the law under which it is incorporated.*

If such is the case in one of the newest States, we may infer what it must be in the older States, where parishes have been forming during a hundred years and more. As a broad conjecture it is safe to say that these 3,000 parishes are governed by 500 various laws, or exist under so many different conditions, which may affect their polity, and tend to influence the character of the tenure of the property they may hold.

In view of this state of things, we have long considered the "Cheney case" a most providential thing for the Church at large—a blessing in disguise. It showed us where we stand; brought to the surface a condition of things little dreamed of before; revealed the insecurity of the foundations under us; called the attention of thinking and earnest men to the subject in a way nothing else could have done. It is an evidence of how,

*At the late Council of the diocese the Committee on Church Property was instructed to obtain, as far as practicable, copies of the "Articles of Association" of the parishes in the diocese, and present an analysis of the same to the next Council. Similar action has been taken in several dioceses.

in many ways, in the end, the Lord "makes the wrath of man to praise Him."

The first step toward finding the remedy for any disease is a careful and accurate diagnosis of the same. Such a diagnosis, in part at least, I have attempted to give. It may be wrong—I sincerely hope it is. To this end it is useless to hide or ignore the facts; we should know the worst. It was determined by skillful engineers that the foundations of the Washington Monument were insecure; to hide such a fact, and keep on rearing the structure would have been criminal in the extreme. The same is true in the Church, as to the subject matter of our inquiry—"the foundations are out of course." We have been "building upon the sand."

By the providence of God only, thus far, great loss has not been incurred; but there may happen to us at any time such a defection as befell the Congregationalists of Massachusetts half a century ago.*

The difficulties of making any change, in any direction, are very many and very great. In the first place there are the prestige and custom of a hundred years. The present method has become a part of the law of the land. Everywhere are vested interests, in the aggregate amoun-

*The history of the lapse of the Congregational societies of New England into Unitarianism, and the taking of church property which had been given for "orthodox" purposes, is most instructive; the litigation growing out of it is much to our point, and confirms the position taken in these papers. The decisions everywhere were, in effect, that each society was a law unto itself, and could do as it pleased with the property it possessed.

ing to vast sums. There would be great jealousy and fear on the part of vestries of relaxing in any way, on the motion of others, the hold upon property they now have. It would appear to them that in some way they were to be robbed of their rights and inheritance, or what they have come to consider as such. There also might arise legal difficulties of a numberless kind—many of these corporations being charged with various trusts, making it difficult or impossible for them to make any change which might endanger the trusts committed to their charge. Our legislatures, also, are very hostile to any legislation tending to concentrate Church property in large amounts in corporate and individual hands, and reasonably and justly so, with the rapacity and greed of the Roman Church before them on every hand. The dread is not to be wondered at when it is remembered that, at the beginning of the reformation in England, the Church, under Roman dominion, owned or controlled one-third of the real property of the realm.

In fact, the difficulties are so many and so great that by some it is asserted that at this day it is impossible to make any radical or effective change. It is insisted upon that we must go on as we now are.

Still, the necessities of the case are admitted to be great, and it is confidently hoped that some remedy may yet be found.

The remedies which have been suggested, and the application of which in some dioceses undertaken, are various. They look in general to the establishment of

some central, more permanent and more responsible body, which shall be a more safe *place of deposit* for the title of Church property than the vestries now afford. Of the necessity of such a place of safety all are agreed, but just what that place or body shall be, its character how constituted, there are many and varying opinions. It lies somewhere, and is somewhat, between the loose, changeable, and irresponsible vestry and the centralized, personal, and equally or more irresponsible method of Rome. The danger of the one is only equalled by the danger (as shown by Archbishop Purcell) of the other.

Of one of the proposed remedies I will here speak, because it has been by some advocated, and in some States, as California and Oregon, and perhaps others, has been carried into practical effect. It is the incorporation of the bishop of any diocese as a "corporation sole," and in the States mentioned the title of some of the property of the Church is so placed.

Objections to this, however, are many, and it has not found great favor. The constitution and statutes of some States forbid such incorporation, and it is apprehended that, in many ways, it would not accomplish the desired end. It would lay another and heavy burden upon already overweighted shoulders; the responsibility would be too great; too much power would be centered in a single hand, although that power be held subordinate to the ruling and supervision of the civil courts. It would be contrary to the tendency and spirit of our

institutions at large. It would be contrary also to the spirit of the Church, for the bishop is not the Church in his own person—is at best but its representative head.

IV.

We have already seen that New York, in 1875 passed a general law with the intent of imposing a character of trust upon religious corporations other than for the congregations which they represented. This effort has been followed in other States—how many I do not know. It was a step in the right direction; but a general feeling had been growing up in the Church before this, of the need of some central and permanent organization, under Church control, which might hold the title of property of the Church.

Very likely similar corporations may have been formed, but the first of its kind of which I have knowledge* was incorporated in Wisconsin in 1848, under the title of "Trustees for the Management and Care of the Funds and Property belonging to the Protestant Episcopal Church in Wisconsin."

These trustees were five in number, were elected at each annual council of the diocese, and were to hold Church property subject to the direction of the council. "Said trustees, hereby incorporated, shall be bound to

*Subsequent to the writing of this I have learned that Florida was incorporated in 1838. See Appendix.

conform to any instructions that may be given them by the said convention touching the management of said funds and property, and the disposition of the income thereof."

This act was amended in 1869 in some particulars, and "authorized . . . to hold, etc., real or personal property . . . for the benefit of the Protestant Episcopal Church in Wisconsin, according to the usages of said Church, and subject to the said convention," etc.

This action was in every way most important, and marked a "new departure," in that it pointed to the idea that the diocese, as represented by its convention, was the proper Church unit (an idea more familiar now than then), and should be the custodian of Church property, as such. And here I would say that Wisconsin has been all along a "seed place," so to speak, of new and better ideas in church polity and practice; has been the pioneer in thought and action in a development which promises ultimately to bring the Church out of the wilderness into a broader and more free and churchly plain. All who know her history know the source from which the inspiration chiefly has sprung.

This action has been followed, in some respects imitated, in others departed from, by various dioceses. A short account of some of the steps taken, without regard to chronological order, I will give.

In the Diocese of Long Island there has been created a corporation known as "The Trustees of the Estate belonging to the Diocese of Long Island," its official

title. These trustees consist of the bishop, *ex officio*, and the members of the Standing Committe, four clergymen and four laymen, who are elected annually by the diocesan convention.

I have not at hand further details in regard to this corporation, but it already holds in trust the title of above twenty pieces of property for different parishes and missions in the diocese, some of great value.* The bishop permits me to quote him as saying in regard to the matter: "I think I may say there is a growing conviction in the diocese of the expediency of vesting title in the diocese, *i. e.* the corporation. Certainly, I favor it, and hope the time is near at hand when my diocese will be leavened with a healthy sentiment on the whole subject. The above-named corporation has been in existence some eight years, and is now well established in the confidence and good-will of the diocese."

It will be seen that the bishop considers this corporation as being practically the same as if the diocese were incorporated. I apprehend, however, a closer consideration would discover a wide divergence in idea and ultimate practical result.

In 1863 the legislature of New York passed "An Act for the Incorporation of the Trustees of the Parochial Fund of the Protestant Episcopal Church in the Diocese of Western New York." It consisted of six prominent

* The magnificent cathedral and other property given by Mrs. Stewart, at Garden City, will be held by this corporation.

laymen of the diocese as trustees, holding office for three years, and their successors elected by the convention. These trustees were authorized to "receive and hold, etc . . real and personal estate . . . devoted in part to the assistance and support of officiating ministers of said Church, . . . and in part to the purchase of glebes and the erection of parsonages," etc.; also, they were empowered to receive and hold real and personal property for other purposes in connection with the Church. The bishop is *ex officio* a member of the board.

In 1868 the diocese was divided, and by an act of the legislature of April 28th, that year, a similar board was created for the Diocese of Central New York, and an equal division of funds and property held in trust provided for. These acts are very important, and those interested in the subject, or contemplating similar action, would do well to give them careful consideration.

In June, 1875, another act was passed by the legislature of New York, so important that I shall copy it almost entire.

"Sec. 1. Any incorporated society or parish of the Protestant Episcopal Church in the Diocese of Central New York shall have power to convey or transfer all or any portion of the real or personal estate of such society or parish to the corporation known as 'Trustees of the Parochial Fund' in said diocese; . . . provided such conveyance or transfer shall be first approved by a resolution of the wardens and vestry of such society or parish,

duly entered in their minutes; and provided, further, that any property so conveyed or transferred shall be held by the said trustees of the parochial fund solely for the use and benefit of the society or parish making the conveyance or transfer, in the discretion of said trustees," etc.

The object and aim of this law will be at once evident. In regard to the matter Bishop Huntington says: "To this board any parish, mission, or individual may deed, by the usual conveyance, any Church property, land, buildings or money. It is all held for the purposes of our Church to all time, and is lifted safely out of all local chances and changes, quarrels and questions. More and more of our new churches, and some old ones, are secured in this way. I favor it to the utmost extent. One of the advantages is that it takes away the necessity of organizing new parishes, and enables us to leave the congregations gathered in a more healthy, primitive, and manageable condition."

Had the "Trustees of the Parochial fund" been so organized, or could it now be so adjusted as to make the diocese a body corporate, very little would be left in Central New York to be desired in the way of legal arrangement.

In New Jersey considerable difficulty has been met with in regard to titles to Church property by vestries becoming extinct, etc.; and a few years ago a committee was appointed by the convention to inquire into the

matter. In consequence, a "board of trustees" has been incorporated in this diocese to recover and hold title to such property, and to hold property for missions and other purposes generally connected with the diocese. Of the special character of its organization I am not informed.

At the Diocesan Convention of Pennsylvania, in 1879, a committee was appointed to inquire into the subject of the tenure of Church property generally, and to report to the next council. This council was lately held, and the committee made an elaborate report, reviewing the whole subject, and recommending the incorporation of a Board of Diocesan Trustees to hold such property, and also presented a proposed form of a charter to be, if possible, obtained. No definite action, however, was taken by the convention. The report is worthy of the consideration of all interested in the subject.

In Central Pennsylvania a corporation has been created known as "The Incorporated Trustees of the Diocese of Central Pennsylvania." Bishop Howe says, in a late address to the council, in regard to the matter:

"Into the hands of this board I propose to transfer all properties now held in trust by me for the benefit of any parish or institution of this diocese; and I earnestly recommend that churches, chapels, rectories, and schools throughout the diocese, and especially in the smaller places, where a succession of trustworthy men, devoted to the interests of the Church, cannot confidently be

expected to arise generation after generation, be conveyed to these incorporated trustees. The provisions for the raising and expenditure of the current income, the election of the minister and other persons for the conduct of public worship, the repairs and decorations of the buildings and grounds, would remain as heretofore in the control and management of the wardens and vestry, but they would have no power to alienate or encumber the real estate which has been provided for the permanent use of any community for religious or charitable purposes. And, perhaps, when it should become of common notoriety that Church property can not be held liable for parochial expenditure, ecclesiastical corporations would not find speculators or tradesmen so ready to give them credit." The charter of this corporation, also, is valuable as a precedent of its kind.

In the Diocese of Pittsburgh is a corporation known as "The Trustees for the Diocese," and its object to receive and hold any property for Church uses. It receives the title for missions and other inchoate Church enterprises. The trustees, except the bishop, who is *ex officio* president, are elected each year by the convention, and report annually. I am indebted to the bishop for these facts, and take the liberty of quoting him as saying: "We avoid any 'bishop corporation-sole trust.' This is a very unsafe and objectionable sort of trust, east or west. I object to it on principle and policy."

Ohio has a corporation composed of five laymen,

known as the "Trustees of the Diocese of Ohio." It was incorporated with such powers as were required to carry out a canon of the diocese to that end. It takes charge of trust-funds, lapsed parishes' estates, receives bequests, etc., etc. Whether the charter is of such a character as the name might imply, that the diocese, as such, is incorporated, I am not aware, but presume not.

The Diocese of Southern Ohio, also, has a similar organization, incorporated, I presume, under the same law, but of its character I am not informed.

I am indebted to Bishop Lay for the following from Maryland, which is very much to our point:

"The legislation of Maryland has always been liberal toward religious bodies. Our vestries are all incorporated by law, and have powers adequate to all needs. Moreover, the Convention of Maryland and the Convention of Easton are incorporated by special acts. We have lately secured an amendment for the removing of doubtfulness, to this effect: 'Said convention may receive, by gift, devise, or otherwise, contributions in money, lands, or other property, and hold the same for burial grounds, Church colleges, Church or parish schools, for the support of missions and mission work, for building, adorning or repairing churches and mission chapels, and for any other such general or special religious or charitable work or agencies within such diocese, as are now or may be hereafter under the jurisdiction, control or sanction of the said convention.' It is further provided

by diocesan canon that there shall be elected annually one presbyter and two laymen, who, with the bishop and treasurer of the diocese, shall be the 'board of managers of the trust fund of the diocese.' This board receives all such money, lands, etc., . . . and makes annual report to the diocese."

In his convention address, 1878, Bishop Lay said: "There are several reasons for entrusting to the convention rather than to the vestry, the custody and administration of funds intended for religious uses. Experience has proved that, when money is invested in the parish among friends and neighbors, the personal considerations which come in seriously interfere with a strict observance of the rules of caution necessary in all business transactions. The convention, through its financial officers, can be impersonal in its management. Moreover, these officers are required to make an annual report, which is scrutinized by a committee. All such reports are spread upon the journal, and open to inspection, and are permanent of record.'

Church property in Maryland may be held either by vestry, or by the convention in trust for the vestry, for any pious use. Whether the incorporation of a diocesan convention is equivalent to the incorporation of the diocese itself is a question for church lawyers to discuss.

There has lately been created in the Diocese of Michigan a body corporate known as "The Church Association of Michigan." The corporators are the bishop and

twenty-one laymen, and the board of trustees consists of seven laymen, of which Gov. C. C. Trowbridge is president. The object is "to promote and assist the religious, charitable and educational interests of the Protestant Episcopal Church within the territorial limits of the Diocese of Michigan, in co-operation with the ecclesiastical authorities thereof," etc. The association may hold land or other property in trust for the Church. This association has the peculiarity that it is a sort of close corporation; the members are elected by the board, and the board in turn by the members, as appears by By-law XII. Over it, in consequence, the diocese or convention has no control. It will be observed that no clergymen, except the bishop, has any connection with the association. The advantages and disadvantages of this plan will not here be discussed. The board has lately published, in a pamphlet of thirteen pages, an account of "Its Organization, Purposes, and By-laws," to which reference is made for further knowledge in regard to the same.

In Western Michigan, also, there exists a "Board of Trustees" incorporated to hold Church property, but concerning it I have no particulars in hand. Bitter complaint, however has come from this diocese of the insecurity of Church property under the present system, and some most aggravated cases of spoliation are reported. The bishop has been most outspoken in regard to the matter, but as yet little has been done.

In 1879 a bill was introduced into the legislature of Illinois, but from some inadvertency failed to pass, the first section of which was as follows: "*Be it enacted*, etc., that any diocesan convention, council, synod, . . . or any other general organization for ecclesiastical or religious purposes, existing in any Church or religious denomination in this State, and which, according to the polity, canons, customs, or usages of such Church or denomination is composed of or represents several parishes, congregations, or particular churches, may organize as, or form, a corporation, with perpetual succession, in the manner hereinafter provided."

The proposed act is too long to further quote, but the object and character of it are evident from the foregoing With some modifications, its passage will be sought at the next meeting of the assembly of the State. As a *study* of an effort in the right direction the proposed act is valuable. The object appears to be to get a statute permitting the *councils* of the dioceses in the State to become bodies corporate.*

In October, 1879, under a law recently passed in Missouri, the bishop and standing committee of the diocese

*This proposed act is apparently a copy, in part, at least, of the New York statute of 1876, under which any diocese in the State may be incorporated. At a meeting of the First Provincial Council of Illinois in June, Mr. Judd, Chancellor of the Diocese of Illinois, proposed the following, which was adopted:

"*Resolved*, By the Federate Council of the Province of Illinois, that the General Assembly of the State of Illinois be and is hereby respectfully requested to enact into law the bill before that body at its last session, concerning religious corporations and the tenure of church property, or ome similar measure.

were incorporated under the name and title of "The Parochial Trust Fund of the Diocese of Missouri." The object of the organization is "to take title to real and personal property which shall from time to time be conveyed . . . to it in aid of the Protestant Episcopal Church in the diocese, etc., to hold the same in trust, . . . etc. It is intended as a safe place of deposit for title to Church property, the beneficiary use and control to remain in the local congregations. The bishop declares his intention, ordinarily, not to consecrate churches unless the title is vested in this organization.

In Iowa the bishop and standing committee are also incorporated under the name of "The Trustees of Funds and Donations for the Diocese of Iowa." The general object and character are similar to the "Trust Fund" of Missouri. The trustees "have no power to convey the title of any property held by them, except by permission of the convention of the diocese." Bishop Perry is very urgent that Church property be conveyed to this body, and refuses to consecrate any church the title to which is not so placed.

In Minnesota, at the council in 1879, a committee was appointed to report to the next council "what canon and statute law are at present in force in regard to the tenure of Church property in this diocese, and to recommend new legislation, if any be required, in the matter." Also, the committee were "requested to report as to the practicability and advisability of the incorporation of

the diocese, as trustee, for the purpose of holding title to Church property, or any funds of the Church."

At the council in June this committee made an able report, drawn up by an eminent legal gentleman of the diocese, reviewing the history of the State legislation in regard to religious corporations, advocating the formation of a diocesan corporation, and presenting a form of a proposed law, similar to that proposed in Illinois, the passage of which, if possible, is to be obtained from the legislature of the State. The full report, which is very instructive, will be printed in the journal of the diocese for the current year.

At the same council, also, a resolution was passed instructing the delegation to the coming General Convention to memorialize that body, asking that a joint commission of the two houses be appointed to enquire into the whole subject of Church Incorporations, and the methods of tenure of Church property among us, and to report the best methods by which the best results may be secured.

In Nebraska the "Cathedral Chapter" has been duly incorporated, and is the "Trustee of the Funds and Property of the Diocese." No special effort, however, has been made to induce the parishes to place the title of their property in this corporation, but it is thought that such action will sooner or later be taken by a large number of the parishes. The bishop now holds in trust the property of missions and unorganized parishes.

In Dakota the bishop, standing committee, and chancellor, are a body corporate to hold all the property of the diocese, purchased as well as leased.

A letter from the Bishop of Kansas informs me that the need of a Diocesan Board of Trustees is keenly felt in that diocese, and that the initiatory steps have been taken towards the formation of such a board, and it is hoped it will be accomplished during the coming year.

It is certain that none of our bishops have been more keenly alive to the necessity of laying sure foundations in the matter of Church property than the far-seeing Bishop of Colorado. In addresses and sermons he has called attention to the subject, and also to the necessity of change in organization and polity so far as our working system is concerned. I take the liberty of quoting his own words as to what has been done in his jurisdiction:

"Here I secured a general law allowing a general corporation for educational, benevolent, and missionary objects, under any name. Under this we have incorporated the Bishop and Chapter of the Cathedral of St. John the Evangelist, Denver, Colorado.

The church property that had been vested in Bishop Randall, and his successors in office, I have vested in this body. It is composed of about the same official persons as the Cathedral Chapter of Nebraska, only with larger diocesan lay representation, having in it only one layman from each rural deanery. Parish prop-

erty heretofore vested in parishes remains so vested, but there are only four or five such incorporated parishes. I hope to get all parishes, or nearly all, to vest in this body. Though it has a local name, it is of diocesan character. We are working out harmoniously a very excellent cathedral system."

At the Primary Convocation of New Mexico, the Bishop also strongly called attention to the subject, and Judge Prince introduced a resolution as follows, which was adopted :

Resolved, That the Bishop, the members of the Standing Committee, the Chancellor, and the Treasurer be requested to organize themselves into a corporation under said act [quoted in preamble], to be known as The Trustees of the property of the Protestant Episcopal Church in New Mexico, for the purpose of taking and holding the property of the church in New Mexico, for the uses and purposes thereof, or of objects connected therewith.

Resolved, That we earnestly recommend that all property of the church in New Mexico be vested in said corporation, in order to secure the same in perpetuity for the purposes contemplated, or to prevent loss, alienation or incumbrance.

Resolved, That we respectfully recommend to the Bishop exercising jurisdiction in New Mexico, that no church building be consecrated except such as are free of incumbrance, and the titles of which are vested in said corporation.

From the foregoing it will be seen that the Bishops in the new west are endeavoring to lay the foundations right.

At the recent Council of Kentucky a committee was appointed "to inquire into the subject of the tenure of Church property, to report to the next Council a full

statement, as near as may be, of all the property and its tenure belonging to, or under the control of, the church or parishes and missions of this diocese, and to prepare and present a suitable plan for the creation of a body corporate . . . to hold real and personal property for the Church . . . subject to the Council of the Diocese," &c. The committee also were instructed to obtain such legislation by the Legislature as may be necessary to carry out the plan of said proposed corporation.

In the course of enquiries upon this subject, the writer has been surprised to find that in some respects the Southern dioceses have been in advance of those in the North, in the matter of diocesan incorporation. This in part may have come from the greater facility with which special charters may be obtained in the South, the Constitutions of most of the northern states, especially those in the West, forbidding special legislation to this end, and compelling all churches to incorporate under general laws. In the Northwest, consequently, we have great difficulty in getting proper laws for this end.

It has already been noted that Florida was incorporated as a diocese in 1838, ten years earlier than Wisconsin, which I had supposed the first. The whole matter, however, would seem, until recently, to have been in abeyance, but a committee was appointed in 1879 to report upon it. That report, made at the recent Council, is so important and interesting that I have determined to reprint a large part of the same. (See Appendix.)

I have been unable to obtain from Tennesse the particulars of the incorporation of the convention of that diocese, but, from reports published by the registrar, infer that action there was some time since taken in regard to giving corporate form to the diocese. In his report to the convention in 1878, the registrar, A. T. McNeal, Esq., of Bolivar, says: "The registrar has heretofore called the attention of the convention to the subject of the tenure of Church property as a most important matter for their consideration, expressing the opinion that the vestiture of such property in the convention (for the use and benefit of the parishes, or such uses as may be designated in the conveyance) is the most secure and satisfactory tenure, but has hesitated in expressing this view until fully brought before them for consideration."

A committee appointed to consider the subject made a strong report, and, among other things said:

"The confusion and serious inconvenience resulting from other tenures have been strikingly brought to the attention of the undersigned during the past year. . . . There can be no serious objection to vesting the title to Church property in this convention, 1st. It is a corporation empowered by law to take and hold as trustee all such property. 2d. The effect of vesting titles in the convention would be to make the convention the holder of the naked legal title in trust for the use of the particular congregation. 3d. The independence and liberty

of the congregation as to the use of the property would in no wise be impaired. Its abuse alone would be restrained. The separation of the legal title from the beneficial use would prevent the latter from alienating it, or encumbering it by debt, without the consent of the convention." The committee closed their report by offering the following resolation:

"*Resolved*, That in the opinion of this convention, the title of all Church property ought to be vested in this convention, in trust for the use of the parish, or for such other purposes as the donor may prescribe, and that the registrar be commended for his effort to accomplish this end, and that he be requested to persevere in his effort to persuade our parishes to cause the titles to their property to be vested in trust in this convention."

I am indebted to N. H. R. Dawson, Esq., of Selma, Ala., for the following:

"In 1864 the Legislature passed 'An act to incorporate the Protestant Episcopal Church in the State of Alabama, and to enable said Church to provide for the orphans and widows of soldiers and other destitute persons.' This act provides that the Bishop of the Diocese, his successors in office, be incorporated by the name of the Protestant Episcopal Church, in the Diocese of Alabama. This act vested all power in the Bishop of the Diocese, or if there be no bishop, in the standing committee. This act was amended in 1871 so as to provide that said corporation should report to the diocesan convention the property which may from time to time belong thereto, and what disposition, if any, may

have been made thereof, the said diocesan convention shall have, and in its discretion exercise a general supervision and control in regard to property belonging to said corporation," &c.

Peter P. Bailey, Esq., of Jackson, Mississippi, informs me that for half a century past there has been appointed annually by the council of that diocese, "Trustees of the Episcopal Fund and Church Property," but that said "Trustees" have not been made an incorporated body until the present year. This corporation is authorized to hold property, real and personal, for the benefit of the church, to hold property in trust for parishes, and is subject to the control of the council of the diocese. This "charter" is worthy of study, and some of its features very valuable.

In 1876 the Council of the Diocese of Georgia passed resolutions looking toward the incorporation of the diocese, and a committee was appointed to effect the same; which incorporation was accomplished the same year, under the name of "The Protestant Episcopal Church of the Diocese of Georgia," with power to sue, &c., . . . to be governed by the constitution, canons, &c. of the Church, . . . to receive donations, &c., . . . to hold property, &c., for the Church."

A question having arisen as to the character of the corporation, a committee reported to the council in 1878, that the "legal effect of the charter was to incorporate all the members of the Church in Georgia with the

bishop and standing committee at their head, and not the bishop and standing committee alone."*

Other dioceses as New Hampshire, Rhode Island and Indiana, and perhaps others, have taken similar steps, but of the character of the action I am not informed.

From the foregoing reports it will be seen that a movement is being made "all along the line" in this most important matter, showing that the mind of the Church is seeking a remedy for the evils of the vestry system everywhere admitted to exist.

V.

The American genius thus far runs to corporations; everything is done by corporation. It may be that the stress of necessity will yet compel us to devise some other way, not only in ecclesiastical, but in secular matters, to carry on public and private enterprises. This favorite child of our begetting threatens to become a giant which may yet strangle the parents which have given it birth. That there is danger ahead in this regard is but too evident, and wise men are gloomily pon-

*This is a much more important matter than appears upon first consideration. The bishop and standing committee are not the diocese, neither is the council. Objection has been raised that it is impossible to so incorporate a diocese. It should not seem more difficult than to incorporate a parish. A diocese may be made a "corporation aggregate," by making all the members thereof members of the corporation in one case as well as in the other. It needs only to define who the members shall be.

dering the issue. But the alternative is not yet apparent. Perhaps, and probably, it will and must come through through some convulsion and revolution which shall shake the foundations, it may be overturn them, and compel us to build anew.*

But, as things are, we have the corporation, and that for the present, for better for worse, we must have. The questions for us to consider in Church matters are, What shall that corporation be? What body shall be given corporate life before the law? How shall it be done?

Of course these questions will be answered variously, and from the stand-point of ecclesiastical theory to a chief extent. We have already seen what idea lies at the base of the action for the most part thus far taken. It is the Puritan idea of the autonomy and independence of the local congregation. So universal has this been that, in a nominal Episcopal Church, for a hundred years, we have gone on incorporating an almost unmixed congregationalism, and there seems to have been almost

*Those desiring to study the subject of Church Incorporations will find in the American Law Register for 1873, beginning with the April number, an essay upon the subject by the Hon. William Lawrence, of Bellefontaine, Ohio, which, with the foot-notes, is a marvel of learning upon the subject. Both Judge Lawrence and Judge Fancher are Methodists, apparently, and it is evident that the Methodists have given this subject more attention than Churchmen have. By direction of the Methodist discipline a clause of trust is inserted in all title deeds made to that body, so that the property cannot be alienated from its purpose. This method affords a certain degree of security, but has its inconveniences, as sometimes it is desirable and necessary to secularize a piece of property and make some change. This method makes such change very difficult.

none to see the incongruity. We have fought valiantly, on paper, for an Episcopal polity, and, in the meantime, created and chartered 3,000 congregational bodies, and placed our whole property, and the power of "calling" and virtual control of the clergy in their hands; but this is beyond our purpose. Those willing to pursue this train of thought can do so in their own way; the subject is not an agreeable one for us to contemplate.

Argument will not here be made to show what is the Church *unit*, the ecclesiastical integer; but in an *Episcopal* Church it ought to be evident. The confusion upon this subject is something amazing to consider; and yet, perhaps, in the face of the history of the past thousand and more years, it is not to be wondered at. But at last men (some men) are getting their heads clear upon it. Our American system—so for as it is a system—is a strange, hybrid mixture of Nationalism and Congregationalism; on the ecclesiastical side, inherited from the "mother" Church, the features of the "national" parent predominate, and upon the civil side the face and character are Puritanic; in fact the whole body corporate is Puritan through and through. It is not to be wondered at that the general aspect is unsatisfactory.

But it is here assumed, as it seems a Churchman should assume without argument, that the *diocese* is the normal Church unit; that it is the integer *per se;* and that as such it should have a body corporate before the law. The simple statement of this is all the argument

I purpose to make; it is all that is necessary; it argues itself. We have seen how in many places there is a *looking* in this direction, but few, however, seem to see clearly the object looked for; there is a dim feeling after it, and by and by, haply, it may be found. Through the mingled haze of Congregationalism and Nationalism and Papalism and Patriarchalism and Provincialism* we may look backward to the age of St. Cyprian, and see, with him, that the Diocese is the Church.

But, of course, any movement tending to lift the Church out of its present anomalous condition, and to place it upon a more catholic and primitive basis, involves a radical change in our working organization. Here is the practical difficulty. Can it be done? How can it be done?

The first necessity is to comprehend clearly what we want to do. We have seen somewhat of the difficulties in the way, but it is not believed they are insuperable. The first difficulty rests in a timidity that calls itself conservatism, that fears to suggest anything, or to entertain any new idea, lest the heavens fall. *Non possumus* is a most potent argument in Church councils, and in the mouths of multitudes besides the Pope of Rome.

*The thoughtful reader will see in this category an epitome of the history of ecclesiastical polity. The unit rose from the Diocese to the Province, to the Patriarchate, then was usurped by Rome. Nationalism was a reaction from Papalism, and Congregationalism from Nationalism. The Province was not the normal unit, but a catholic and necessary aggregation of units, and has nothing in common with modern nationalism, with which it is sometimes identified.

The real difficulty lies in the readjustment of our statute laws to meet the case. We have seen how they have been crystallized about the Puritanic idea. How shall, how *can* a diocese be incorporated ?

The making of the bishop a "corporation-sole," as we have seen, does not meet the requirements. The same objections lie in a measure against "close corporations" of every kind ; they are an unchurchly method in every aspect. Perhaps for schools and some other purposes, as hospitals and charitable institutions, the "close corporation" may be convenient, and may be safe, provided the conditions of trust are stamped strongly upon it ; but for the Church itself, or for holding Church property proper, great objections are urged against it. All trusts for the Church should be charged with a direct responsibility to the Church itself.

Again, as to the incorporation of trustees to hold diocesan property, it will be seen that this differs widely from the incorporation of the diocese itself. The same is true of the incorporotion of the diocesan council or convention, as is done in Maryland and Tennessee, although it is a nearer approach. We saw in our first paper that the vestry of a parish, as such, are not incorporated, but they are trustees for the parish, which in itself is the body corporate. As Judge Fancher says, "The congregation, and not the trustees, are incorporated. . . . Whatever property is acquired is vested in the corporation aggregate, and not in the trustees."

Now, it is apparent that this is just what is necessary to be done with the diocese. We need an entire change of base from the congregational to the Episcopal line in the matter of Church property, and in a good many things besides. Can it be done? How can it be done? are questions for Church lawyers to answer. Right here is the point we have been aiming at all along—the heart and core of the whole business. The great Bishop of Illinois and his able counsel aimed to accomplish this by legal process in the civil court. In every aspect, in every light of the Church, they were right; they ought to have succeeded, but they failed, because the statute law, custom, usage, precedent were all against them; and law, custom, usage, precedent were all wrong, and these, of course, the courts must follow.* Our problem

*The case of Emmanuel church, Louisville, Ky., differed radically from that of Christ Church, Chicago. In the former a clear condition of trust was a part of its charter. It was as follows:

We, whose names, etc., . . . do hereby associate ourselves together under the name, etc., . . . *and by so doing do adopt the constitution and canons of the Protestant Episcopal Church in the United States of America and of the Diocese of Kentucky.*" The decision hung chiefly upon this. In the case of Christ Church, Chicago, there was no such provision, and the presumption held, in the absence of expressed trust, that the absolute title to the property lay in the congregation; the burden of proof lay with the Bishop. In the Louisville case the presumption was on the other side. These cases are typical in their way, and show the strength of the position I have taken.

If no other remedy is open, it certainly is competent for parishes in whose charters are no trust clauses, implied or expressed, if they will, to reincorporate and insert such clauses of trust. This, after all, may furnish the clue to the outlet from our difficulty, to some extent. (See Appendix in regard to Florida.)

is to reverse all these, if possible make them right, to cause them to be adapted to the written and unwritten law of the Church. Can it be done? Upon the answer to this question may hang, humanly speaking, the destiny of the Church in our land.

D. D. CHAPIN.

The statute of Minnesota for the incorporation of Roman Catholic parishes contains the following "trust clause:" "Such corporation shall at all times be subject to the general laws and discipline of the Roman Catholic Church, and shall receive and enjoy its franchises as a body-politic solely for the purposes mentioned of maintaining religious worship according to the doctrine, discipline and interest of the Roman Catholic Church, and upon the violation and surrender of its charter, its property, real and personal, shall shall vest in the Bishop of the Diocese, and his successors in trust, for such congregation, and for the use and purpose above mentioned, and for the support of the educational and charitable institutions of that Church."

APPENDIX.

Church Incorporation in Florida—Extract from the Journal of the Council, 1880.

The Committee appointed by the last Council, on the matter of "Incorporation of the Diocese," report, that they find already in existence an Act of Incorporation of the Diocese, approved February 10th, 1838. and which may be seen on page 40 of the Journal of the Diocese for 1838, and is among the original acts in the office of the Attorney General of the State as follows:

"An Act to Incorporate the Protestant Episcopal Church in the Diocese of Florida."

SECTION 1. Be it enacted by the Governor and Legislative Council of the Territory of Florida. That the Clergy and Laity of the several Parishes composing the Protestant Episcopal Church in the Diocese of Florida, be, and they are hereby declared to be a body corporate, by the name and style of "The Protestant Episcopal Church in the Diocese of Florida," and they, and their successors, shall have full power to acquire and be possessed of, and hold for the use and benefit of the said Church, real and personal estate. and dispose of the same, and to receive all gifts, grants and donations of every description whatsoever, which may be made to the same, and shall have power, by their corporate name aforesaid, of sueing and being sued, pleading and being impleaded, and of using all necessary and proper steps for recovering any property whatever, which the said Church may hold or claim, and also the power to make all necessary rules and regulations for the securing as well the said property, as of all moneys, rents, issues, and profits growing out of the same, or any part thereof, and shall have a corporate seal, which they may renew, alter and change, at pleasure.

SEC. 2. Be it further enacted, that all Parishes of said Diocese which may hereafter be formed and established within the same,

shall be admitted to the benefits and privileges of said incorporation, upon the principles prescribed, or which may hereafter be prescribed, by the rules of said Church, established in convention for the government of the Parishes composing the same, and upon no other principles whatsoever.

SEC. 3. And be it further enacted, That no lands, tenements, hereditaments, money, or other things given at any time or at any place, for the use and benefit of said Church, shall be withdrawn from the same by any Parish, or the congregation thereof, or otherwise disposed of, except for the use and benefit of said Church, or said Parish, while the said congregation shall continue in and belong to the said Diocese, except by the consent of said Diocese, in convention assembled.

Your Committee recommend the following amendments to this Act: In section 1, before the word "Clergy," insert the words, "Bishop and the." Section 1, after "real and personal estate." strike out all to the words, "and to receive," and insert "and sell, convey or dispose of the same." In the same section, after the words "for the receiving," insert "disposing of or conveying." Section 2 amend by striking out the word "Convention" where it occurs, and insert instead thereof the word "Council." Amend section 3 so as to read as follows: "And be it further enacted, That no lands, tenements, hereditaments, money or other things given to, or acquired at any time or at any place for the use and benefit of the said Church, shall be encumbered or alienated without the consent of the said Diocese, in Council assembled, or of the Bishop and Standing Committee of the Diocese, under direction of the Council." Your Committee, therefore, offer the following resolution:

Resolved, That a Committee be appointed to have the proposed amendments laid before the next Legislature, and also to prepare and report to the next Council such rules and by-laws as may be necessary to carry out the provisions of the Act.

The same Committee, to whom was referred the resolutions on page 10—

Resolved, That a Committee be appointed to confer with the proper authorities in the several Parishes of this Diocese, with the view of bringing about absolute uniformity in the Articles of Association of the Parishes; also to examine the Articles of Association adopted by this Diocese in the Council of 1873, suggesting such changes as may appear necessary. This Committee shall have power to call for the Charters, Constitutions or Articles of Association of each of the said Parishes, as the basis of their work, and report in full to the next Council.

—report as follows:

To make their work as effective as possible, the Committee communicated with the authorities of every Parish in the Diocese. This elicited the fact that great diversity existed. Some Parishes were organized under special acts of the Legislature, and others under the "General Act for the Incorporation of Religious Societies." The organization of only four was found to be in conformity to the the Articles provided by the Diocese. In several, the basis of organization was purely congregational and ignored fundamental principles of Church order. Two had no formal organization, except admission by vote, into union with the Diocese. The very serious result of this singular diversity is, that from the civil, or legal standpoint, the Constitution and Canons of the General Convention and of the Diocese, are, in several Parishes, inoperative. The only remedy for which is, in the opinion of the Committee, the prompt and decided action of this Council requiring absolute and explicit conformity by every Parish, with the Articles provided. No difficulty exists in the way of accomplishing this, if the parochial authorities are loyal to the Church, as every Constitution, Organization and Association provides, within itself, for alteration or amendment.

For further information, see printed report, "Articles of Association," 1880.